IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 19 OF 2005

STATE
Through Public Prosecutor,
High Court of Bombay at
Panaji. ..... Applicant/Appellant

V e r s u s

Janu Gawade
S/o. Hari Gawade
R/o. Marcel, Goa. ..... Respondent
(Orig. Accused)

Ms. Winnie Coutinho, Public Prosecutor for the State.

Mr. S. G. Bhobe, Advocate for the Respondent/Accused.

CORAM: N. A. BRITTO, J.

DATE: 11th October, 2006.

This is State's Appeal against the acquittal of the accused under Sections 279, 377 and 304A I.P.C., by Judgment dated 25.08.2004, of the learned J.M.F.C., Panaji. A fatal accident took on 03.03.2001, at about 13.20 hours at a place which is commonly known as Ribandar, Cause way between the KTC Mini bus No. GA 01/X 0185 driven by the accused and a

Trax Jeep bearing No. GA 01/C 1016, driven by Jose Gomes, who died subsequently when he was taken in the hospital. The said Jose Gomes, at the relevant time was returning after collecting about eleven children and some marble slabs. The KTC bus was proceeding from Ponda to Panaji, while the said Trax Jeep was proceeding from Panaji towards Ponda. In other words, the accident took place whilst both the vehicles were moving in opposite direction.

2. After the accident, panchanama and sketch were drawn by Head Constable Rahul/P.w.13. In support of the panchanama, prosecution has examined P.w.1/Gomes. The said panchanama and sketch when read with the evidence of P.w.1/Gomes, shows that the width of the tar road at the place of accident is about six metres and the bus was found with its back and front wheels at 1.35 metres and 1.70 metres respectively from the edge of the said road from its left hand side. There was a space of about 2.60 metres from the right back wheel of the said bus. The Trax jeep is shown on its left side and apparently there was a distance of about one metre between the front right wheels of the respective vehicles. Although both the said vehicles were moving in opposite direction, rashness was attributed to the accused as the driver of the said K.T.C. bus on the allegation that the

accident had taken place whilst he was overtaking another vehicle. The case of the accused was that the accident was not caused due to his mistake. In other words, although the accused did not say it in so many words, as per the accused, the accident was caused due to the mistake of the said Jose Gomes, the driver of the said Trax.

3. The prosecution had examined out of 10/11 students, eight students namely P.w.4/Jeeth Bopaiah, P.w.5/Delito Fernandes, P.w.6/Aralda Gomes, the daughter of the deceased Jose Gomes, P.w.7/Sunil Chopdekar, who is also the brother of the deceased Sonia, P.w.8/Jeniska Afonso, P.w.9/Aurora Fernandes, P.w.10/Allan D' Cunha and P.w.11/Estan Afonso. The death of the driver of the Trax jeep namely Jose Gomes and two other students namely Wayzin Anes and Sonia Chopdekar, was proved by the prosecution through the evidence of P.w.12/Dr. Sapeco, who had conducted their post mortem examination. There is no dispute that the driver of the Trax and the said two students had died in the said accident. The medical certificates in respect of other students were produced in terms of Section 294 of the Code of Criminal Procedure, 1973. However, it appears that the Police Inspector Shri Paes, who had investigated the case and filed a formal complaint was not examined inspite of several

opportunities having been given to the prosecution. The learned Magistrate thereafter had dismissed an application belatedly filed for the purpose of summoning the said Police Inspector.

4. The learned Magistrate in acquitting the accused has come to the conclusion that the prosecution witnesses examined, gave different versions and, therefore, they could not be relied upon. Ms. Coutinho, the learned Public Prosecutor on behalf of the State has submitted that the evidence of the students, who were examined by the prosecution clearly shows that it is the accused who was overtaking another vehicle and in doing that, the accused came and gave a dash on the Trax driven by the said Jose Gomes.

On the other hand, Shri Bhobe, the learned Counsel on behalf of the accused submits that it is difficult to accept the version given by the said prosecution witnesses that they had seen the accused overtaking another vehicle consideting the number of them, who were packed in the said Trax and further considering that they were all returning from school and might have been busy, talking amongst themselves. Learned Counsel Shri Bhobe further submits that none of the said witnesses have deposed in

what manner the Trax itself was bring driven, and therefore, their description of the bus being driven in a particular manner without description as to how the Trax, in which they were travelling, was being driven, cannot be accepted. Learned Counsel has also pointed out that the trial was conducted in a casual manner in that, one witness, who was 12 years old, was asked questions to find out whether he was in a position to understand the questions put to him but another witness of the same age, was not asked any questions.

5. The mood in the Trax jeep is best reflected by P.w.5/Delito, who stated that one boy and three girls were sitting on the front seat of the Trax jeep and six students were sitting behind the seat of the driver and he was sitting on the back seat of the driver. He stated that they all students, were looking outside when the accident took place and that he did not know as to how many cars or vehicles were seen by him when he was looking outside like other students. He stated that the KTC bus came from opposite direction, overtaking another vehicle and came in a fast speed and dashed against the Trax jeep. However, he did not state what was the said other vehicle, which the accused was trying to overtake. He also stated that, he did not see the KTC bus overtaking some other vehicle before

dashing their Trax. It may be noted that P.w.5/Delito might have been about 9 years of age at the time when the accident took place. P.w.4/Jeeth Bopaiah, was another student studying in the IIIrd standard at the relevant time and who was in the said Trax jeep. He too stated that the bus came from the opposite direction from Ponda side, overtook one vehicle and dashed against their Trax. He too did not specify as to what was the said other vehicle which the accused overtook. He was sitting in the middle seat and there is nothing on record even to suggest remotely whether the said middle seat was facing the front of the Trax or the rear of the said Trax jeep. P.w.6/Aralda Gomes stated that she was sitting on the reverse seat. She did not specify nor the prosecution made any effort to find out from her whether she was facing the driver or the rear side of the said Trax jeep. She stated that she noticed the KTC overtaking another vehicle and thereafter the said KTC bus came and banged against their Trax jeep. She too could not identify what was the said other vehicle, the said KTC bus overtook. P.w.7/Sunil Chopdekar also stated that the Mini bus was overtaking the vehicles and dashed against their Trax jeep. He did not specify how many vehicles the accused overtook nor gave any descriptions of the said vehicles. However, in cross examination he stated that the accused was overtaking an Esteem car. If, as per P.w.7/Sunil Chopdekar, the accused overtook Esteem

car, as per P.w. 8/Jeniska, the accused overtook another bus and it is therefore obvious that, they had not seen the accused actually overtaking another vehicle. P.w.9/Autora did not state anything about the accused overtaking any other vehicle. P.w.10/Allan, also did not state about the accused overtaking any other vehicle and so also P.w.11/Estan. The prosecution did not even care to find out, considering that the witnesses examined by them were child witnesses, as to which places they were sitting in the said Trax jeep with a view to find out whether they were in a position to see the oncoming KTC bus. In the absence of the description of the vehicle by P.w.4/Jeeth, P.w.4/Delito and P.w.6/Aralda and the contradiction in the nature of the vehicle seen by them i.e. P.w.7/Sunil Chopdekar and P.w.8/Jeniska and any reference being another vehicle overtaken, by P.w.9/Aurora, P.w.10/Allan and P.w.11/Estan, it is difficult to believe their versions that the accident took place at a time when the accused was overtaking another vehicle at all. Their versions also appear to be improbable in the light of the panchanama/sketch produced by the prosecution. It is quite improbable that in case the accused had overtaken another vehicle, he would have been found almost parallel to the road and on its extreme left. Therefore the versions given by the said child-witnesses appear to be improbable.

6. In the light of he above, the acquittal of the accused could not be faulted. I find that there is no merit in this appeal, consequently, the same is hereby dismissed.

N. A. BRITTO, J.

arp/*